

REMARKS/ARGUMENTS

Prior to entry of this Amendment, claims 1-15 and 19-21 were pending in this application. No claims have been amended, no claims have been added and no claims have been canceled herein. Therefore, claims 1-15 and 19-21 remain pending in this application. Applicants respectfully request reconsideration of these claims for at least the reasons presented below.

Election/Restriction

The Office Action has required restriction of the claims under 35 U.S.C. §121 to one of two groups. More specifically, the Office Action states:

"Restriction to one of the following invention is required under 35 U.S.C. 121:

A. Claims 1-8 and 16-18 are drawn to a method for receiving a program by a user location that is sent from a content provider, classified in class '709, subclass 231.

B. Claims 9-15 and 9-21 are drawn to a method for receiving a program by a user location that is sent from a content provider, classified in class '709, subclass 231."

As an initial matter, the Applicants respectfully request clarification of these groupings. More specifically, the Applicants respectfully point out that claims 16-18 have been canceled. Please see the Amendment filed April 12, 2006 in which claims 16-18 were canceled.

Additionally, the Applicants do not understand exactly which claims are intended to be included in group B. Since, as noted above, claims 16-18 have been canceled, the Applicants assume that the grouping of the claims, as quoted above, includes a typographical error and should instead read "B. Claims 9-15 and 19-21 . . ."

However, adding to the Applicants' confusion is the explanation of these groupings which states in part:

"On the contrary, within invention B, the method comprises the steps of: recording a second segment of the program if the user request is detected before the period expires; and discontinuing the recording of the first segment if the user request is not detected before a period expires."

The Applicants respectfully point out that claims 9-15 do not include recitation of "discontinuing the recording of the first segment if the user request is not detected before a period expires." Thus, the Applicants believe that claims 9-15 should not be included in group B.

Furthermore, regardless of the groupings, the Applicants respectfully traverse this or another restriction requirement for the following reasons. The pending claims include three independent claims, claims 1, 9, and 19. Each of these claims is directed to a method of receiving a program by a user location from a provider. Claim 1 recites "recording at least a first segment of each of a first plurality of programs sent from the content provider before any user request for any of the first plurality of programs; detecting the user request for one of the first plurality of programs; recording at least a second segment of each of a second plurality of programs sent from the content provider if the user request is not detected before a stagger period expires; and recording the one of the first plurality of programs if the user request is detected before the stagger period expires."

Claim 9 recites "determining if any of a first segment of each of a plurality of programs sent from the content provider before any user request for any of the plurality of programs are not already stored; recording any first segment of each of the plurality of programs that are not already stored; detecting the user request for one of the plurality of programs; and recording a second segment of the one of the plurality of programs in response to the detecting step." That is, claim 9 recites elements of recording a first segment, detecting a user request, and recording a second segment based on the user's request as recited in claim 1 but adds the elements of determining if any of a first segment are not already stored and storing and recording those not already stored.

Similarly, claim 19 recites "recording a first segment of the program sent from the content provider before any user request for the program; detecting the user request for the program; recording a second segment of the program if the user request is detected before a period expires; and discontinuing the recording of the first segment if the user request is not detected before the period expires, wherein the period is less than a duration of the program." That is, claim 19 recites elements of recording a first segment, detecting (or, conversely, not detecting) a user request, and recording a second segment based on the user's request (or lack thereof) as recited in claims 1 but adds the element of discontinuing the recording of the first segment if the user request is not detected before the period expires.

The Applicants respectfully contend that claims 1, 9, and 19 would not present a serious burden if examined together. As stated in the proposed groupings of the claims quoted above, the classification for these claims is the same. Regarding the field of search, MPEP §808.02 states: "[w]here it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes/subclasses or electronic resources, or employing different search queries, a different field of search is shown, even though the two are classified together." The Applicants contend that the claims would not in fact require searching different classes/subclasses or electronic resources, or employing different search queries. Therefore, the Applicants respectfully contend that claims 1, 9, and 19 would not present a serious burden if examined together. In fact, in the four prior Office Actions, these claims have been examined together, without objection.

As noted in MPEP §808.02: "[w]here, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions." Therefore, the Applicants respectfully request withdrawal of the restriction requirement or, if maintained, a clarification of the groupings of the claims.

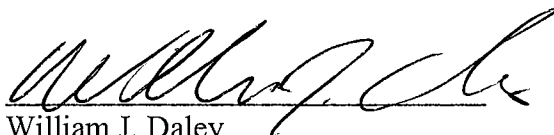
CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

Date: January 18, 2007


William J. Daley
Reg. No. 52,471

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834
Tel: 303-571-4000 (Denver office)
Fax: 303-571-4321 (Denver office)

WJD/sbm

60961449 v1